

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

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VELMA DUNN, individually and as  
personal representative of  
the estate of JEROME LOPEZ,

Plaintiff,

v.

CIV. NO. 06-027 WJ/WPL

NATIONAL UNION FIRE INSURANCE  
COMPANY, REIMAN CORPORATION,  
and FIDENCIO VILLALOBOS,

Defendants.

**MEMORANDUM OPINION AND ORDER ON  
DEFENDANT NATIONAL UNION'S MOTION TO RECONSIDER**

THIS MATTER comes before the Court pursuant to Defendant National Union's Motion for Reconsideration of Memorandum Opinion and Order Granting Motion to Remand (Doc. 43).

Having reviewed the motion, I will stand by my decision to exercise my discretion to decline to exercise jurisdiction under the Declaratory Judgment Act for the reasons that follow.

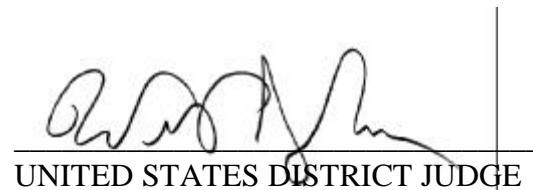
My decision to remand this case to state court was based solely on my determination that the New Mexico courts have a strong interest in determining the scope of the Delgado exception to the Workers' Compensation Act exclusivity provision in light of insurance policy exclusions. In its motion for reconsideration, Defendant argues that Wyoming rather than New Mexico law will apply to the interpretation of the insurance policy language, and that the New Mexico state court has no greater interest in making this determination than this Court.

First, Defendant states that it raised the choice of law issue in its response to Plaintiff's motion to remand. This contention is not accurate. In a footnote of Defendant's response,

Defendant noted that Plaintiff's Complaint alleged that New Mexico law applies to this matter, stated Defendant's belief that Wyoming law may govern the interpretation of the insurance contract, but concluded by stating that Defendant was **not** raising the issue of the proper choice of law in response to the motion to remand. Thus, Defendant did not raise this issue in its response to the motion to remand, and is raising it now in response to the Court's ruling. As such, the Court is hesitant to entertain this argument for retaining jurisdiction over this case after jurisdiction has already been declined.

However, even after considering the argument, I am not inclined to change my ruling. Regardless of the law that will be applied to interpret the insurance policy provisions and exclusions at issue here, New Mexico law will apply to the issue whether Plaintiff's tort claim is foreclosed by the Worker's Compensation Act under Delgado. Many companies with workers in New Mexico are out-of-state companies with insurance policies to which another state's law will apply. Thus, New Mexico courts have a strong interest in the interaction of the holding in Delgado with insurance policy exclusions such as the ones at issue in this case regardless of the law applied to interpret the insurance policy. Accordingly, my ruling stands, and Defendant's motion is DENIED.

**IT IS SO ORDERED.**



UNITED STATES DISTRICT JUDGE